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No. 87-2129

In The

Supreme Court of the United States

October Term, 1987

THOMAS A. WHITE, Judge of the
Court of Common Pleas of Philadelphia County

Appellant,

v.

JUDICIAL INQUIRY AND REVIEW BOARD
OF PENNSYLVANIA

Appellee.

On Appeal from the Supreme Court of Pennsylvania

MOTION TO DISMISS

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QUESTIONS PRESENTED

Whether the findings and holdings of the Appellee Judicial Inquiry and Review Board and of the Pennsylvania Supreme Court that Appellant, by accepting $300 in cash from a donor when the donor and/or its members were and are potential litigants before the Court in which Appellant served and by deliberately furnishing false and misleading information to agents of the Federal Bureau of Investigation during an official investigation of payments by the donor to judges, violated the Pennsylvania Constitution and Pennsylvania's Code of Judicial Conduct constituted an unconstitutional application of the Constitution and Code to Appellant because Appellant did not have sufficient notice that such conduct by a Judge violated judicial standards.

Whether the temporary suspension of Appellant with pay during the pendency of the disciplinary proceedings against him pursuant to the applicable rule of procedure of this Appellee Board, a rule which requires expeditious handling of a matter once such an Order is entered and which rule provided procedural rights to Appellant to expedite the Board's proceedings under such circumstances, rights Appellant chose not to exercise, was unconstitutional.

Whether the removal from office of a judge on the basis of conduct found by the Appellee Board and the Pennsylvania Supreme Court to have severely impaired the judiciary's efforts to maintain and preserve the integrity and independence of the judiciary and to maintain the public's confidence constitutes reviewable and reversible discipline.

Whether the fact that the Appellee Board, in accordance with the Pennsylvania Constitution and the Rules promulgated pursuant to the constitutional mandates, investigates charges against a member of the judiciary, prefers charges and holds evidentiary hearings, and, when appropriate, suggests recommended findings and sanctions to the Supreme Court raises due process concerns where the Pennsylvania Constitution expressly requires its Supreme Court to conduct its own review of the record and to make the final adjudicative decision as to whether or not a judicial officer has violated the Constitution in the Code of Conduct and, if so, what level of discipline is appropriate.

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CITATION TO OPINION BELOW

The Opinion of the Pennsylvania Supreme Court is reported at ___ Pa. ___, 538 A.2d 473 (1988) and is set forth in Appellant's Appendix 2a-37a. The Final Report and Recommendation of the Judicial Inquiry and Review Board is set forth in Appellant's Appendix 38a-110a.

CONSTITUTIONAL PROVISIONS INVOLVED

Article V, Section 17, of the Constitution of Pennsylvania provides in pertinent part:

> § 17. Prohibited activities.
>
> . . . .
>
> (b) Justices and judges shall not engage in any activity prohibited by law and shall not violate any canon of legal or judicial ethics prescribed by the Supreme Court. Justices of the peace shall be governed by rules or canons which shall be prescribed by the Supreme Court.
>
> (c) No justice, judge or justice of the peace shall be paid or accept for the performance of any judicial duty or for any service connected with his office, any fee, emolument or perquisite other than the salary and expenses provided by law.

Article V, Section 18 of the Constitution of Pennsylvania provides in pertinent part:

> § 18. Suspension, removal, discipline and compulsory retirement.
>
> (a) There shall be a Judicial Inquiry and Review Board having nine members as follows: three judges of the courts of common pleas from different judicial districts and two judges of the

Superior Court, all of whom shall be selected by the Supreme Court; and two non-judge members of the bar of the Supreme Court and two non-lawyer electors, all of whom shall be selected by the Governor.

(b) . . . The board shall act only with the concurrence of a majority of its members.

. . .

(d) Under the procedure prescribed herein, any justice or judge may be suspended, removed from office or otherwise disciplined for violation of section 17 of this article, misconduct in office, neglect of duty, failure to perform his duties, or conduct which prejudices the proper administration of justice or brings the judicial office into disrepute, and may be retired for disability seriously interfering with the performance of his duties.

(e) The board shall keep informed as to matters relating to grounds for suspension, removal, discipline, or compulsory retirement of justices or judges. It shall receive complaints or reports, formal or informal, from any source pertaining to such matters, and shall make such preliminary investigations as it deems necessary.

(f) The board, after such investigation, may order a hearing concerning the suspension, removal, discipline or compulsory retirement of a justice or judge. The board's orders for attendance of or testimony by witnesses or for the production of documents at any hearing or investigation shall be enforceable by contempt proceedings.

(g) If, after hearing, the board finds good cause therefor, it shall recommend to the Supreme Court the suspension, removal, discipline or compulsory retirement of the justice or judge.

(h) The Supreme Court shall review the record of the board's proceedings on the law and facts and may permit the introduction of additional evidence. It shall order suspension, removal, discipline or compulsory retirement, or wholly reject the recommendation, as it finds just and proper.

. . .

(j) The Supreme Court shall prescribe rules of procedure under this section.

. . .

STATUTORY PROVISIONS INVOLVED

The Code of Judicial Conduct adopted by the Pennsylvania Supreme Court effective January 1, 1974, provides in pertinent part:

CANON 1

A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

CANON 2

A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

A. A judge should respect and comply with the law and should conduct himself at all times in a

manner that promotes public confidence in the integrity and impartiality of the judiciary

B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interest of others; nor should he convey or knowingly permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

Commentary

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must therefore accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

. . .

CANON 5

A Judge Should Regulate His Extra-Judicial Activities to Minimize the Risk of Conflict with His Judicial Duties

. . .

C. Financial Activities

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

. . .

The Rules of Procedure Governing the Judicial Inquiry and Review Board promulgated by the

Pennsylvania Supreme Court effective July 1, 1969, as amended December 5, 1986, provide in pertinent part:

> Rule 1. Preliminary Investigation
>
> (a) The Board, of its own volition, or upon receiving a statement not obviously unfounded or frivolous, alleging facts indicating that a judge may be subject to suspension, removal, discipline or compulsory retirement upon the grounds specified in Article V, Section 17-18 of the Constitution of the Commonwealth of Pennsylvania, or for violations of the Canons of legal or judicial ethics or Standards of Conduct prescribed by the Supreme Court, shall make a preliminary investigation to determine whether formal proceedings should be instituted and a hearing held.
>
> . . .
>
> Rule 2. Notice of Formal Proceedings
>
> (a) After the investigation has been completed, if the Board concludes that formal proceedings should be instituted, the Board shall without delay issue a written notice to the judge advising him of the institution of formal proceedings to inquire into the charges against him.
>
> . . .
>
> Rule 14. Board Vote
>
> If the Board, upon consideration of the record of the proceedings, finds good cause, it shall recommend to the Supreme Court the suspension, removal, discipline or compulsory retirement of the judge. The affirmative vote of a majority of the Board shall be necessary for such recommendation or for dismissal of the proceedings. A member of the Board may not abstain from voting.
>
> . . .

Rule 18. Disposition

The Supreme Court shall review the record of the Board's proceedings on the law and facts and may permit the introduction of additional evidence. It shall order suspension, removal, discipline or compulsory retirement, or wholly reject the recommendation, as it finds just and proper, or may refer the matter back to the Board for further proceedings.

. . .

Rule 24. Emergency Interim Suspension Orders and Related Relief

(a) Incident to a preliminary investigation conducted pursuant to Rule 1 of these Rules or during a formal proceeding conducted pursuant to Rule 2 of these Rules, the General Counsel, with the concurrence of a reviewing member of the Board [as selected by the Board], may, upon their determination that the continued service of a judge is causing immediate and substantial public harm and an erosion of public confidence to the orderly administration of justice, which conduct appears to them to be a violation of the Code of Judicial Conduct or the Rules Governing Standards of Conduct of District Justices, petition the Supreme Court for injunctive or other appropriate interim relief, including temporary suspension or reassignment of the judge.

(b) A copy of the petition shall be personally served upon the respondent-judge by the Board's General Counsel contemporaneously with the filing of the petition with the Supreme Court.

(c) Within ten days after such service, the respondent-judge may file an answer to the petition with the Supreme Court and General Counsel for the Board.

(d) Following the ten-day response period, and after consideration of such response, the Supreme Court may issue such orders to the respondent-judge

as may be necessary. Such orders of the Supreme Court may require temporary suspension of the performance of judicial duties by the respondent-judge or such other relief as may be deemed appropriate pending further definitive action under Rules 1 and/or 2 of these Rules.

(e) The respondent-judge may at any time petition the Supreme Court for dissolution or amendment of an order of temporary suspension or other relief issued pursuant to this Rule. A copy of the petition shall be served upon the Board's General Counsel.

(f) Within ten days after such service, the General Counsel for the Board may file an answer to the petition with the Supreme Court and serve a copy of such answer upon the respondent-judge.

(g) Following the ten-day response period, and after consideration of such response, the Supreme Court may modify or dissolve its order as it deems appropriate under the circumstances.

(h) A respondent-judge who is subject to an order issued pursuant to this Rule may request an accelerated disposition of the charges which form the basis of the said order by filing a notice with the General Counsel of the Board requesting accelerated disposition. Within thirty (30) days after the filing of such notice, the Board shall complete any investigation conducted pursuant to Rule 1 of these Rules and decide whether to proceed with formal proceedings in accordance with Rule 2 of these Rules, if the same has not already been filed. In the event that formal proceedings are instituted pursuant to Rule 2, the matter shall be assigned to a hearing committee for accelerated disposition. Thereafter, the matter shall proceed and be considered by the hearing committee and the Board without appreciable delay. On motion of the respondent-judge, the Board, in disposing of matters submitted for accelerated disposition, may

reduce the number of days provided by these Rules for filing exceptions and scheduling oral arguments thereon.

(i) Recommendations for emergency orders and related relief made by the Board's General Counsel, the Board or a judge to the Supreme Court under this Rule shall not constitute a determination under Rule 16, nor shall action taken under this Rule require the filing of a record with the Supreme Court as contemplated by that Rule. All papers filed with, and proceedings before, the Board and Supreme Court under this Rule shall be, and remain, confidential but shall be made part of the record which may be filed with the Supreme Court as contemplated in Rule 20 when the Board takes final action in a matter as provided in Rule 16 of these Rules.

STATEMENT OF THE CASE

This case involves judicial disciplinary proceedings resulting in Appellant's removal from judicial office for accepting, in his chambers, a cash payment from potential litigants in his court and for making deliberate misrepresentations to agents of the Federal Bureau of Investigation during their official investigation of such actions by the labor union which made the cash payment. Appellant is one of a number of judges of the Philadelphia courts who received cash payments from the union. Following a *de novo* review of the proceedings conducted by the Appellee Board, the Supreme Court of Pennsylvania has determined that the removal of eleven

judges, including Appellant, was necessary to protect and preserve the integrity of Pennsylvania's judicial system.[1]

Here, as below, Appellant does not dispute the facts which were found during the disciplinary proceedings and which were relied upon as a basis for his removal. Rather, he attacks the standards for judicial conduct provided by the state's Constitution and its Code of Judicial Conduct, claiming that they did not provide him with sufficient notice that his conduct violated judicial standards. He also alleges constitutional infirmity in Pennsylvania's disciplinary procedures.

Pennsylvania's procedures are set forth in the Constitutional and statutory provisions involved, *supra*, pp. 1 to 8.[2] The Constitution and the Rules provide for the Appellee Board constituted of five judges, two attorneys and two lay people and charges it with keeping informed as to matters relating to grounds for judicial discipline and with receiving complaints or reports regarding such matters. The Board is required to conduct investigations and, when appropriate after such investigation, to issue charges and hold hearings and, if after such hearing, it finds good cause, it is mandated to recommend discipline to the state's Supreme Court (See Const. Article V, Section 18, Rules 1, 2, 16 and 18, *supra*). The Court must conduct its own review of the record of the Board's proceedings

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[1] Three similar recommendations are presently pending in the Pennsylvania Supreme Court.

[2] They are substantially identical to those found in approximately 24 other states, see *In re Hanson*, 532 P.2d 303 (Alaska, 1975).

on the law and accept, reject or modify the Board's recommendation as it, the Supreme Court, finds just and proper (See Const. Article V, Section 18 and Rule 18, *supra*).

The disciplinary action taken against Appellant pursuant to these procedures was initiated by the Appellee-Board following public disclosures involving a federal labor racketeering investigation being conducted by the Federal Bureau of Investigation concerning the Roofers Union 30 and 30B headquartered in Philadelphia. Such disclosures included an indictment in which the Federal Grand Jury charged that the union engaged in a pattern of racketeering activity including making cash payments to public figures including a number of Philadelphia judges.

As a result of such disclosures, and consistent with its constitutional mandate, the Board initiated an inquiry and, pursuant to the applicable federal procedural rules, requested access to the information developed in the federal investigation. This request was granted by the federal courts on December 2, 1986. Based on the information thus received and on its own investigations, the Board issued formal charges against Appellant on December 12, 1986, and January 28, 1987, charging that he had received cash payments from the Roofers Union in 1984 and 1985 and had provided false information to the FBI. The Board also filed a Petition for Interim Relief with its Supreme Court, pursuant to Rule 24 of its Rules of Procedure, see p., *supra*, which provides, *inter alia*, that a petition must be based upon a determination that the continued service of a judge "is causing immediate and

substantial public harm and an erosion of public confidence to the orderly administration of justice" and that the judicial conduct appears to be a violation of the Code of Judicial Conduct. The Board, therefore, in its petition,[3] which is set forth as an Appendix, *infra*, pp. 1 to 28, stated that the required determination had been made and set forth the basis for that determination.

The Petition noted the public disclosures during the federal criminal investigation, including indictments and a plea bargain statement made by one Thomas Brown which identified judges to whom Brown had made cash payments on behalf of the union; noted the public reputation of the union-donor as reflected in National Labor Relations Board decisions, court decisions and Congressional testimony; and noted public reaction to the disclosures, including statements by bar leaders and editorial comment. The petition also outlined the investigative steps taken by the board and detailed the information available to the Board concerning Appellant's conduct[4] and the information and explanations provided to the Board by Appellant during its investigation.

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[3] Though Rule 24 would permit such a petition to be filed upon the necessary determination made by the General Counsel and a designated member of the Board, the Board, in view of the importance of the petitions and their impact, has determined that they shall be authorized by a majority of the Board, and that was done here.

[4] The petition did not discuss Appellant's misrepresentations to the FBI since such information was not then available to the Board.

Following Appellant's written response to the petition, the Supreme Court ordered the Appellant suspended from judicial duties pending ultimate resolution of the disciplinary proceedings. Though the Board recommended suspension without pay, the Court suspended Appellant with pay, subsequently observing in its opinion below removing Appellant that to do otherwise "would create serious due process concerns," Appellant's App. p. 4a.

The rule provides that a judge subject to an order of suspension or other relief may petition the Court for dissolution or amendment of the order at any time. The rule also provides for a request for accelerated disposition by the affected judge. Appellant took neither step.[5]

Appellant appeared at the formal hearing with counsel, presented legal defenses and character evidence and testified on his own behalf. He admitted, as he had during the investigation, receipt of $300 cash from the Roofers Union in December of 1985,[6] testifying that he

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[5] The Supreme Court order suspending Appellant with pay was issued on January 30, 1987. Formal charges had been filed on December 12, 1986, and January 28, 1987, and a hearing on the charges was held on March 11, 1987. The Board's Final Report and Recommendation was filed in the Supreme Court on August 5, 1987, and, following written objections by Appellant and briefs by both the Board and Appellant, the matter was argued on November 11, 1987 and decided on February 28, 1988.

[6] Following deposition taken for the formal hearing at which the witness who had provided information concerning

(Continued on following page)

did not return the funds but rather used it to buy gift certificates for his staff and other court personnel. He denied furnishing false or misleading information to the Federal Bureau of Investigation.

The evidence produced at the hearing established (see Board's Findings of Fact, Appellant's App. pp. 42a-46a) that in December, 1985, one Thomas Brown, delivered an unmarked bank-type envelope containing $300 on behalf of the Roofers Union to Appellant. Brown came to Appellant's chambers and, during a brief conversation, laid an envelope on Appellant's desk. A few days later, Appellant opened the envelope, found it contained $300 in cash, cash Appellant assumed must have come from the Roofers Union.

Appellant took no steps to return the money to the donor, but rather he gave the cash to his judicial aide with instructions to purchase gift certificates, which was done. The Appellant then gave the certificates to court workers. And, though he attended a luncheon at the union offices a week later, a party at which Appellant saw Thomas Brown who had delivered the money, he made no attempt to arrange the return of the money. Appellant did not dispute these facts.[7]

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the alleged cash payment in 1984 testified, the Board found that the testimony did not support the charge and the charges related to 1984 were dismissed.

[7] On May 1, 1986, following public disclosure of the union's payments to judges and subsequent to his interview by

(Continued on following page)

On February 12, 1986, Appellant was interviewed by two agents of the FBI concerning a federal investigation of the Roofers Union. Appellant testified that he knew that the FBI's investigation involved Tom Brown who had delivered the money, and the Roofers Union, whom he assumed was the donor. Appellant also testified that the FBI agents asked him if Brown had handed him an envelope and he answered in the negative because Brown placed the envelope on the desk and not in his hand.

Based on this evidence,[8] the Board found (see Board Conclusions of Law, Appellant's App. pp. 46a-49a) that

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the FBI concerning the cash payment, Appellant filed a required Financial Disclosure Statement in which he disclosed his receipt of the cash stating that he assumed at the time the $300 was from the Union. He attached a letter setting forth his disposition of the cash. The disclosure form was a Board exhibit.

[8] Also admitted into evidence was electronic surveillance obtained by federal court order and containing conversations relating to judges obtained by microphone surveillance of the union headquarters. The evidence consisted of taped conversations in which Roofers Union officials demanded and obtained money from individuals who received funds from the Union's legal defense fund; conversations in which the identity of the intended recipients of the cash, including Appellant, were discussed; transcripts of an "envelope stuffing party" including repeated discussion of the dollar amounts intended to be given to various recipients including Appellant; conversations with the witness Thomas Brown, discussing the dangers of having names on the envelopes, informing him that the judges' envelopes would contain either $300 or $500, that there would be "hash marks" on the envelopes, that three hash marks

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Appellant's conduct had violated Canon 5(C)1 of Pennsylvania's Code of Judicial Conduct, see p. 4, *supra*, which provides that a judge should refrain from financial dealings that reflect adversely on his impartiality or exploit his judicial position. The Board also found that Appellant's receipt and use of the $300 cash under the totality of the circumstances violated Canon 2, see p. 3, *supra*, which provides that a judge should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary and should not convey to others the impression that they are in a special position to influence him, and Canon 1,

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would signify $300 and that "all the threes are judges"; and conversations in which the witness Brown reports the delivery of the envelopes. Finally, the electronic surveillance also consisted of conversations with certain judges, including conversations during which cash payments were made, and conversations in which the officials and members of the union demonstrate their attitude concerning judges and, particularly, the judges who were recipients or intended recipients of the cash payments. The Board determined such evidence was relevant since it aids in establishing that cash payments were made, and, by demonstrating the intent of the donors and their attitude or state of mind concerning the judges, it aids in establishing that the very dangers intended to be avoided by the Code of Judicial Conduct resulted from the conduct at issue.

The Board rejected exhibits consisting of public sources, including a compilation of *all* newspaper articles involving the union in the two newspapers of general circulation in Philadelphia, which were offered as evidence of the donor's public reputation, see the Final Report and Recommendation of the Board, Appellant's App. p. 48a, 67a-68a.

see p. 3, *supra*, which requires a judge to observe the high standards essential to preserve the integrity and independence of the judiciary.

The Appellee Board found that Appellant knew that the FBI was attempting to find out whether he had received cash from Thomas Brown and that the question whether the envelope containing the cash was placed in his hand as opposed to on his desk was not relevant to the inquiry in any way and that Appellant's response, therefore, amounted to the intentional providing of false information. The Board held that such conduct also violated Canon 1 by constituting a failure to observe high standards of conduct, and Canon 2 by constituting a failure to conduct himself in a manner promoting public confidence in the integrity of the judiciary.

In the Opinion which is the subject of this appeal, the Pennsylvania Supreme Court reviewed the record of the Board's proceedings and, accepting the Board's recommendations, ordered Appellant removed from judicial office. The Opinion involved seven other judges also and the Court stated, Appellant's App. p. 10a:

> We approach these cases mindful of our duty to uphold the integrity of our system and thereby maintain the public confidence. Of equal concern is our sworn obligation to pass judgment fairly upon any party who comes before the bar of this Court. To this end, we have scrupulously reviewed the records in each of the eight cases presently before us, and while the matters are being resolved in one opinion, it should be emphasized at the outset that this format was selected because all of the cases arise from the same factual genesis and raise a number of identical legal and factual challenges. The individual merit of

each matter has in no way been obscured or compromised by the disposition of these cases in this joint opinion. Our review will commence by addressing those common legal issues followed by a discussion of the facts and legal questions unique to the individual respondents.

The Court subsequently stated, Appellant's App. pp. 28a-30a:

Judge Thomas White is a member of the Court of Common Pleas of Philadelphia County having been elected to a ten-year term commencing in January 1978. He has been charged, inter alia, with having received $300 cash from the Roofers Union in 1985, and with providing false information to FBI agents. The Board found that this conduct violated Article V, section 17(b) of the Pennsylvania Constitution and Canons 1, 2 and 5(C)1 of the Code.

Judge White first contends that he did not accept the cash for his own use, and therefore his conduct was not prohibited. He claims that Brown left an envelope containing the cash on his desk without his knowledge. Upon his discovery of the cash several days later, he had it converted to gift certificates which he then distributed to his office personnel. He attempts to distinguish his case from the other judges who he argues converted the Roofers' money to their own use. This contention is obviously specious. When one accepts a dominion over property that is offered and makes a judgment as to its disposition, it is of no consequence how he chose to use it.

Judge White violated the Code by his receipt of the money, enabling Roofers Union officials to entertain the impression that they were in a special position to influence him. His conduct tainted the integrity of his office. See Canon 2(B). His subsequent disposition of the cash could only absolve him of this wrongdoing if it had the effect of undoing the harm done, in other words, disabusing the donor of

any notion that it would improperly influence him. There was no effort to eradicate the impression reasonably created by his acceptance of the money.

Respondent would also have us reject the Board's finding of misconduct with respect to his statements to FBI officials. Judge White responded negatively to the agent's question, "Did Tom Brown hand you an envelope. . . ." He claims that he did so because Brown placed the envelope on his desk and not in his hand. At the time, however, he knew that Brown had left cash in his chambers. Judge White describes his statement as a literally truthful response given in a stressful situation. Truthful perhaps, but still misleading. We have no doubt that Judge White understood or should have understood the import of the FBI inquiry. Thus he could have been completely candid only by responding that although Brown did not hand him the cash, respondent did receive the same and disposed of it in the manner outlined previously. In view of the foregoing derelictions, we find it appropriate that Judge White be removed from office. (Footnote deleted)

Appellant filed an Application for Reargument which was denied by the Pennsylvania Supreme Court and this appeal followed.

ARGUMENT

THE QUESTIONS PRESENTED ARE INSUBSTANTIAL

I. The Application of the judicial standards of the Pennsylvania Constitution and Code of Judicial Conduct to Appellant's conduct raises no due process or other constitutional issue.

A. Appellant had notice that his Conduct was Prohibited.

Stripped of irrelevant rhetoric, Appellant's argument is simply that he did not have fair notice that his conduct

in receiving $300 from a potential litigant delivered to his chambers in an unmarked envelope, in failing to reject the cash or return it to the donor, and in providing false and misleading information to the authorities about his receipt of the cash during a criminal investigation violated the standards applicable to judicial conduct because gifts are not specifically mentioned. The mere statement of this argument should, if judicial standards are to mean anything at all, be sufficient to demonstrate that it is patently insubstantial.

In any event, the notice provided by the standards at issue overwhelmingly meet constitutional standards. Canon 1 provides that a judge should observe high standards of conduct so that the integrity and independence of the judiciary may be preserved and mandates that the Canons should be construed and applied to further the same objective, see p. 3, *supra*.

Canon 2 provides that a judge should avoid impropriety and the appearance of impropriety and should conduct himself in a manner that promotes public confidence in the integrity and impartiality of the judiciary. It also provides that a judge should not convey or knowingly permit others to convey the impression that they are in a special position to influence him. The commentary states that public confidence is eroded by irresponsible or improper conduct by judges, see pp. 3-4, *supra*.

Canon 5(C)1 provides that a judge should refrain from financial dealings that tend to reflect adversely on his impartiality or exploit his judicial position, see p. 4, *supra*. Finally, the Pennsylvania Constitution provides that no judge should accept for any judicial service or

duty any fee, emolument or perquisite other than the salary and expenses provided by law, see p. 1, *supra*.

These provisions clearly would provide a person of ordinary intelligence fair notice that conduct such as Appellant's was unacceptable conduct, and would satisfy the more stringent standard applied to criminal statutes by this Court in *Calanetti v. Franklin*, 439 U.S. 379 (1979) cited by Appellant. *A fortiorari*, they must satisfy the standards applicable to judicial disciplinary rules when viewed, not as a "person" only, but as a judge.

As the Supreme Court of Wisconsin has observed in *Matter of Seraphim*, 294 N.W.2d 485 (1980):

> . . . [A] greater degree of flexibility and breadth is permitted with respect to judicial disciplinary rules and statutes than is allowed in criminal statutes. Cf. *Parker v. Levy*, 417 U.S. 733, 94 S.Ct. 2547, 41 L.Ed.2d 439 (1974). As the Minnesota Supreme Court noted in In re Gillard, 271 N.W.2d 785, 809 (Minn. 1978), "the constitutionality of necessarily broad standards of professional conduct has long been recognized."
>
> Statutes and constitutional provision which define in similarly broad terms the grounds for removal of judges from office have been upheld in *Napolitano v. Ward*, 317 F.Supp 79 (N.D.Ill. 1970) ("for cause"); *Keiser v. Bell*, 332 F.Supp. 608 (E.D.Pa. 1971) ("Misconduct in office"); *Halleck v. Berliner*, 427 F.Supp. 1225 D.D.C. 1977) ("conduct which is prejudicial to the administration of justice or which brings the judicial office into disrepute"); *In re Nowell*, 293 N.C. 235, 237 S.E.2d 246 (1977) ("willful misconduct in office" and "conduct prejudicial to the administration of justice that brings the judicial office into disrepute"); *Nicholson v. Judicial Retirement and Removal Comm.*, 562 S.W.2d 306 (Ky. 1978) ("for good cause"); and *In re Gillard*, 271 N.W.2d 785 (Minn. 1978) (persistent failure to perform duties, habitual intemperance or

> conduct prejudicial to the administration of justice). . . .
>
> The fact that these provisions may not have the preciseness required of laws defining criminal conduct is of no consequence. Respondent has not been charged with engaging in criminal conduct, but with judicial misconduct. His reading of the Code of Judicial Ethics is not as a layman, unfamiliar with the law, but as a judge of twenty years' experience and an attorney of almost twenty more. We think the notice provided by the code is adequate.

Finally, and conclusively, even if it were assumed, *arguendo,* that specific notice is required, Appellant had such notice. The question of whether or not acceptance of money can violate the Canons of Judicial Conduct now in force in the Commonwealth of Pennsylvania was directly addressed by the Pennsylvania Supreme Court in *In re Dandridge,* 462 Pa. 67, 337 A.2d 885 (1975). There, a judge accepted the net proceeds from a testimonial dinner in his honor for his own personal use. The judge argued that since Canon 32, the provision in the previous code of judicial conduct expressly prohibiting receipt of such gifts, was not contained in the current code, the current code did not apply to his receipt of the money. Canon 32 read:

> A judge should not accept any presents or favors from litigants, or from lawyers practicing before him or from others whose interests are likely to be submitted to him for judgment.

The Court stated in response to this argument:

> Although the language of Canon 32 does not survive in the new code, the earlier prohibition against accepting improper gifts is encompassed in the language of new Canon 5, Subd. C(1):

> A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves. More persuasively, the present Canon 2["a judge should avoid impropriety and the appearance of impropriety in all his activities,"] was clearly intended to carry forward the proscription of old Canon 32 as applied to a matter such as the evidence discloses in this case.

Dandridge, supra, 462 Pa. at 73, 337 A.2d at 888.

The court also quoted with approval language from the Reporter's Notes to the current American Bar Association Model Code of Judicial Conduct, which states with reference to the acceptance of gifts permitted under the ABA Code, "the judge must keep in mind, however, that the standard of impropriety and the appearance of impropriety in Canon 2 is applicable to this area of his conduct." *Id.*

For any and all of these reasons, Appellant's challenge to the applicable judicial standards on notice grounds is totally without merit.[9]

B. The Sanction of Removal was Appropriate.

The Appellee-Board, finding that the Appellant's conduct in violating the Code of Judicial Conduct by

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[9] Appellant's suggestion that the requirement that gifts having a value in excess of $200 be reported makes such gifts, whatever the circumstances, acceptable so long as they are reported is equally without merit and merits even less discussion, see the Board's Opinion, Appellant's App. p. 59a.

accepting cash under circumstances and providing false and misleading information to the authorities discredited the judiciary, concluded that removal was the only sanction that would restore public confidence in the independence and honor of the judiciary, a confidence which is declared by Canon 1 to be "indispensable to justice in our society.", Appellant's App. p. 77a-80a. The Pennsylvania Supreme Court, noting that conduct that would undermine the integrity of the judiciary by destroying the impartiality that is the hallmark of a just and fair judicial system would justify the imposition of the most extreme sanction, *Id*, at 11a-13a, ordered Appellant's removal from judicial office.

The protection of the integrity of its judicial system is one of the most compelling of state interests. It must follow that decisions of a state Supreme Court imposing judicial discipline in order to provide such protection should be undisturbed absent the most clear and compelling of challenges. As is conclusively demonstrated by the holdings of the Appellee Board and the Pennsylvania Supreme Court in this matter, the decision of the Court in imposing the sanction of removal was more than amply supported by the important state interests at stake and imposed only after careful and thorough deliberation.[10]

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[10] The difference in sanctions determined to be appropriate to the public receipt of the net proceeds of a testimonial dinner which Appellant finds "alarming" clearly flows from the difference in the circumstances, and see the Board discussion below, Appellant's App. pp. 61a-66a. The vacating of the suspension order in *In re Greenberg*, 457 Pa. 33, 318, 318 A.2d 740 (1974), even if relevant, involved a judge who had been

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We submit that the sanction of removal was appropriate and raises no constitutional concern even without regard to the broad discretion and authority which must repose in state judicial systems to regulate and control the conduct of its members to, in the words of Canon 1, preserve the integrity of the judiciary.

II. The Board's Procedures Raise No Substantial Constitutional Issues

A. The Procedures of the Board Do Not Constitute Impermissible Commingling of Investigative, Prosecutorial and Adjudicative Functions

Appellant's contention, that the procedures of the Appellee-Board raise due process concerns in that they permit a commingling of the functions of the prosecutorial, investigative and adjudicative functions has been rejected in every state with a scheme of judicial discipline similar to Pennsylvania's. The Board's procedures mandated by Article V, Section 18, of the State Constitution and by the Rules are identical to those presently found in approximately 24 jurisdictions, see *In re Hanson*, 532 P.2d 303 (Alas. 1975) in which the Supreme

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convicted for actions prior to becoming a judge and who had received a Presidential pardon.

Appellant's claim that he was found "innocent" by his retention election is clearly irrelevant since the State Constitution reposes the responsibility and authority for judicial discipline in the Supreme Court. In any case, it is more than answered by the election figures which show that only 71% of those registered voted in the election and only 32% of those voting voted on Appellant's retention with 32% of those opposing retention. In other words, only approximately 16% of the registered voters voting in the election, voted to retain Appellant.

Court of Alaska, after reviewing the history of "commingling" attacks on this structure of judicial discipline, concluded that the argument has been rejected by "all courts which have considered the question." See, e.g., *In re Inquiry Relating to Rome*, 218 Kan. 198, 542 P.2d 676 (1975); *In re Nowell*, 293 N.C. 235, 237 S.E.2d 246 (1977); *In re Brown*, 512 S.W.2d 317 (Tex. 1974); *In re Mills*, 539 S.W.2d 447 (Mo. 1976); *In re Diener and Broccolino*, 268 Md. 659, 304 A.2d 587 (1973).

In the Rome case, the Supreme Court of Kansas rejected the "commingling" argument with the following language:

> "We think that reposal in the Commission of the dual functions of investigations and in making findings and recommendations . . . does not result in a biased or partial tribunal violative of the judge's Constitutional procedural right. The Commission's findings and recommendations are advisory only." 542 P.2d at 684.

Similarly, the Supreme Court of North Carolina in the Nowell case, *supra*, held that " . . . [a]n agency which has only the power to recommend penalties is not required to establish an independent, investigatory and adjudicatory staff." The Supreme Court of Texas in the *Brown* case, *supra*, wrote that "any alleged partiality of the Commission is cured by the final scrutiny of this adjudicative body."

The due process "commingling" argument in the circumstances presented here has also been rejected by all the federal courts in which it has been advanced, including this Court. In *Roy v. Jones*, 349 F.Supp. 315 (W.D. Pa. 1972), *aff'd. on other grounds*, 484 F.2d 96 (3d Cir. 1973), the

District court for the Western District of Pennsylvania was faced with the argument that the J.I.R.B. was constitutionally disqualified to issue charges and conduct hearings involving 34 district justices because the J.I.R.B. had earlier recommended the interim suspension of those officials. The District Court held that the prior recommendation of suspension was not disqualifying because the J.I.R.B., in making that recommendation, was relying on information gathered in the proceeding and not from impermissible, extra-judicial sources.[11] Finally, the Court in *Roy v. Jones* wrote, ". . . [e]ven if the Board is biased, which this Court finds it is not, the determination made by the Board will not be a final adjudication; it will merely be a recommendation which may be approved or disapproved by the Supreme Court [of Pennsylvania]", quoting *Keiser v. Bell*, 332 F.Supp. at 608 (E.D. Pa. 1971).

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[11] That, of course, is precisely the situation presented by the Board's Rule 24 petition which was based on the information developed in its proceedings as of the date of the Petition.

The Constitution charges the Board to "Keep informed as to matters relating to grounds for suspension, removal, [or] discipline . . . of judges" (Art. V, Section 18(e)), and the Rules require the Board to determine that charges are to be issued (Rule 2 (a)) and the Constitution states that "[t]he Board shall act only with the concurrence of a majority of its members." (Art. V, Section 18 (b)). Rule 14 provides that charges can only be issued upon an affirmative vote of a majority of the Board, and that no member may abstain from voting. If the Board can, consistent with due process, conduct formal proceedings following its determination that formal charges should be filed, certainly the decision to file a Rule 24 petition is not disqualifying.

In *Keiser v. Bell* the Federal District Court for the Eastern District of Pennsylvania was faced with a case in which the then Executive Director of the J.I.R.B. had sworn out the complaint, had participated as a member of the fact-finding committee, and had voted as a J.I.R.B. member on the recommendation for discipline. Judge Higginbottam held the "commingling" due process argument to be "plainly insubstantial", given the "clear separation of preliminary investigative and final adjudicatory functions." 332 F.Supp. at 619.

In *Witherow v. Larkin*, 421 U.S. 35 (1975), this Court found no due process violations in the procedures of a state licensing board that first issued formal findings of fact and conclusions of law asserting probable cause to believe that the petitioner had engaged in various acts prohibited by the statutes and then, as it had the power to do, proceeded to finally adjudicate the matter and impose punishment. We would note again that the Judicial Inquiry and Review Board can not issue final adjudications and this distinction is a critical and conclusive one. *Witherow* also specifically approved and reaffirmed this Court's holding in *Federal Trade Commission v. Cement Institute*, 333 U.S. 683 (1947), which is also dispositive of the issues raised by Appellant.[12]

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[12] Among the arguments rejected by this Court in *Cement Institute* was petitioner's claim that it was a denial of due process for the commission to pass on the issue of alleged violations of the anti-trust laws by petitioner on the grounds that the Commission had, in public statements including Congressional testimony, expressed the belief that petitioner's conduct had violated the law. In rejecting this contention, the

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The cases cited by Appellant as expressing "suspicion" about the intermixing of the investigatory and adjudicatory functions do not cast doubt on this clear and consistent line of authority. Each case cited by Appellant involved an agency which was empowered to impose sanctions or take similar *final* adjudicative action. The cases discussed above applicable to and controlling the question of the due process requirements of boards and commissions such as the Appellee which do not act as the final adjudicative body, but simply recommend results, clearly establish that the procedures and practices of the Judicial Inquiry and Review Board fully meet the necessary due process standards.

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Court noted that the fact that the Commission's members had entertained such views as a result of prior *ex parte* investigations did not mean that the minds of the Commission's members were made up and did not require disqualification of the Commission (*Id*, at 700-703). The Court also stated that:

> " . . . [No] decision of the Court would require us to hold that it would be a violation of procedural due process for a judge to sit in a case after he had expressed an opinion as to whether certain types of conduct were prohibited by law. In fact, judges frequently try the same case more than once and decide identical issues each time, although those issues involve questions both of law and fact. Certainly, the . . . Commission cannot possibly be under stronger constitutional compulsions in this respect than a court." (*Id*, at 703.)

B. The Suspension of Appellant Pending the Resolution of His Disciplinary Proceedings Does Not Raise Substantial Constitutional Issues.

As set forth in the Statement, *supra*, pp. 10-12, Appellant was suspended with pay pending the outcome of the disciplinary proceedings pursuant to Rule 24 of the Board's Rules of Procedure which the Court below held is the maximum interim relief that could be sought or authorized without raising constitutional concerns. And, as noted, the rule provides procedural safeguards which include providing the right of a judge subject to a suspension order to move to vacate the order at any time and/or to seek expeditious consideration of the charge against him, safeguards which Appellant found it unnecessary to invoke. Therefore, Appellant's characterization of the Rule as depriving him of his job or title and his position and as depriving him of his salary or livelihood without the assurance of a prompt disposition are simply in error and provide no basis for his claim of constitutional infirmity.

CONCLUSION

The appeal fails to present a substantial federal question and should be dismissed.

Respectfully submitted,

ROBERT L. KEUCH
General Counsel
Judicial Inquiry and
Review Board

August, 1988

IN THE SUPREME COURT OF PENNSYLVANIA
(JIRB Docket No. ___)

IN THE MATTER OF:	)JUDICIAL INQUIRY AND REVIEW BOARD
JUDGE THOMAS A. WHITE	)HEARING DOCKET NO.119 (Complaint Docket No. 86A-109)

PETITION FOR INTERIM RELIEF

This Petition is filed pursuant to Rule 24 of the Rules of Procedure governing the Judicial Inquiry and Review Board, No. 113 Judicial Inquiry and Review Board Docket, effective December 5, 1986.

For the reasons set forth in the Memorandum of Support attached hereto, the General Counsel and at least a majority of the Board have determined that the continued service of Respondent Thomas A. White as a Judge is causing immediate and substantial public harm and an erosion of public confidence to the orderly administration of justice as a result of conduct which, in the judgment of the Board and the General Counsel, violates the Code of Judicial Conduct. Therefore, General Counsel, with the concurrence of at least a majority of the Board, hereby petitions this Honorable Court, pursuant to subsection (a) of Rule 24, to immediately suspend the Respondent without pay pending further action in this matter by the Board pursuant to Rules 1 and/or 2 of its Rules of Procedure.

Respectfully Submitted,
/s/ Robert L. Keuch
Robert L. Keuch
General Counsel
Judicial Inquiry and Review Board

Dated Dec. 19, 1986.

IN THE SUPREME COURT OF PENNSYLVANIA
(JIRB Docket No. ___)

IN THE MATTER OF:	) JUDICIAL INQUIRY AND REVIEW BOARD
JUDGE THOMAS A. WHITE	) HEARING DOCKET NO.119 (Complaint Docket No. 86A-109)

MEMORANDUM OF SUPPORT TO THE PETITION FOR INTERIM RELIEF

Pursuant to Rule 24(a) of the Rules of Procedure governing the Judicial Inquiry and Review Board, the Board, through its General Counsel, has petitioned this Honorable Court to immediately suspend the Respondent without pay. The purpose of this Memorandum is to set forth the reasons for the determination of the Board and the General Counsel that Respondent's continued service as a Judge is causing immediate and substantial public harm and an erosion of public confidence to the orderly administration of justice as a result of conduct in violation of the Code of Judicial Conduct and that the Respondent should be suspended without pay.[1]

On October 23, 1986, a Federal Grand Jury sitting in Philadelphia returned a sixty-one count indictment charging 19 individuals associated with Roofers' Union Locals 30-30B, a Labor Union with approximately 7000

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[1] The Board was unanimous in concurring that a Petition pursuant to Rule 24 was necessary, with a majority of the Board concurring in the requested relief.

members headquartered in Philadelphia and operating in Eastern Pennsylvania, Delaware and New Jersey, with participation in the affairs of an enterprise through a pattern of racketeering activity and with racketeering acts which included extortion, embezzlement and bribery, from 1983 to the present time. Among other things, the Federal Grand Jury charged that the Union ran a Prepaid Legal Services Plan as an employee benefit plan, that it received kickbacks from the law firm which was hired to represent the Union and its Members pursuant to this plan, and that the Union and its officials used the kickback money and other Union funds as the source of cash which was given to approximately 50 federal, state and local public officials in southeastern Pennsylvania and New Jersey for the purpose of influencing them concerning matters affecting persons associated with and affiliated in any way with the Roofers' Union.

The indictment, though not identifying any of the judges by name, stated that the intended recipients of the money included approximately 18 judges, including judges of the Philadelphia County Court of Common Pleas, the Philadelphia Municipal Court, and the Philadelphia Traffic Court. The Grand Jury specifically charged the delivery of sums of money in amounts ranging from $200 to $1000 to such judges in the years 1983, 1984, and 1985.

On the same day, October 23, 1986, the Grand Jury returned two other indictments charging Philadelphia County Common Pleas Judge Esther R. Sylvester and Philadelphia Municipal County Judge Mario F. Driggs with wrongfully using their positions to obtain money from the Roofers' Union. Both indictments reflected that

the judge involved had received $300 from an official of the Union.

The Federal indictments were the culmination of a year-long investigation into the activities of the Roofers' Union by the federal investigators and prosecutors. During that investigation, and beginning in approximately February 1986, information concerning the investigation appeared in the public press. That information included the fact that judges in Philadelphia County had been overheard on court authorized electronic surveillance accepting funds from Representatives of the Roofers' Union. Other public disclosures included the fact that Common Pleas Judge Mary Rose Fante Cunningham admitted that she had been offered and had accepted $300 in cash from an official of the Union and the further disclosure that, confronted with the evidence she had done so, she agreed to cooperate in the investigation and, in doing so, wore a consensual recording device.

On November 14, 1986, the federal government filed in the federal courts a plea bargain that had been entered into by one of the individuals charged in the indictment of October 23, 1986. In that document, the federal government, for the first time, identified by name some of the judges who were identified by the evidence in the federal investigation as receiving sums of money from the Roofers' Union.

The public reaction to the disclosures made during the investigation and in the court documents described was strong and immediate. Representative of such reaction were statements by a former United States Attorney, the Chancellor-elect of the Philadelphia Bar Association

and a former chancellor of the Bar Association that the public was losing confidence in the court system and that there was a crisis of confidence in the judiciary. Representative of the editorial comment was a *Philadelphia Inquirer* editorial of November 21, 1986, stating that allowing the judges who had received cash from the Union to remain on the bench was resulting in the public's loss of confidence in the judicial process.

As a result of the problems that it perceived in the Philadelphia Court System, the Judicial Inquiry and Review Board had, in the Spring of 1986, sought investigative assistance from the Office of Attorney General. Through the Attorney General, the Board contacted the Federal authorities to advise them of its interest in having any and all information that could be made available that would permit the Board to exercise its responsibilities. Immediately following the return of the indictment, the Board moved for disclosure of the Federal Grand Jury and investigative information. The Board's Motion was granted on December 4, 1986, and the material is presently being provided to the Board, with the first materials being received on December 5, 1986. The information received to date includes grand jury materials, FBI interviews of witnesses, reports of physical surveillance of individuals, and transcripts of certain conversations overheard on a court authorized electronic surveillance that was conducted at the business offices of Roofers' Union Local 30-30B. In addition, the Board has reviewed and analyzed the financial disclosure reports which are required to be filed by all judges by Supreme Court Order No. 47, Judicial Administration Docket No. 1 beginning with calendar year 1984.

The Board has also taken cognizance of the type of organization that is the source of the cash payments received by the judges. The Roofers Union, Local 30-30B, has an extensive and consistent history of labor union violence and it and its officials and members appear before the Court on a continuing basis. For example, the National Labor Relations Board has found Local 30 emphatically guilty of violence in at least two cases and issued remedial orders, see Roofers Local 30 (Associated Builders and Contractors, Inc.), 227 N.L.R.B. 1444 (1977) and Roofers Local 30 and Edward R. Kitson and Martin J. Sobol, 228 N.L.R.B. 652 (1977). The violent tactics of the union were also commented upon by this Court, *Altemose Construction Company vs. Construction Trades Council of Philadelphia et al; Appeal of Steve Traitz*, 449 Pa. 194, 296 A.2d 504 (1972) and by the Third Circuit Court of Appeals, see *Altemose Construction Company, et al, vs. National Labor Relations Board*, 514 F.2d 8(CA3 1975). The same incident that led to those court decisions resulted in a conviction of eleven members of the Roofers Union in 1980, for labor violence at a construction site at the Valley Forge Hilton Hotel. In a congressional hearing before the Senate Committee on Governmental Affairs, extensive testimony was heard concerning violence in the labor movement in general and as associated with the Roofers Union in particular. For example, a statement by Robert M. McKee, Special Agent in Charge of the U.S. Department of Labor, Office of Inspector General, Office of Organized Crime and Racketeering, Philadelphia, Pennsylvania, stated that Roofers Union, Local 30-30B, has a history of violence. Mr. McKee's testimony went on to detail a number of incidents involving the Union and its

employees or officials in violence or other illegal acts, see Hearings Before the Permanent Sub-Committee on Investigations of the Committee on Governmental Affairs, United States Senate, Ninety-Eighth congress, First Session, February 15, 23 and 24, 1983, page 387 *et seq.* The investigative information available to the Board, as previously described, confirms that the reputation of the union is well-deserved and that there has been no basic change in its character or activities.

Information available to the Board indicates that Respondent White received cash payments from a representative of the Roofers Union, Local 30-30B, in the years 1984 and 1985. Respondent White filed financial disclosure forms as required for the years 1984 and 1985 and did not list a contribution for 1984, but, on his 1985 form, did acknowledge the receipt of three hundred dollars ($300.00) in cash. He listed the source of the gift as Tom Brown, noting that he assumed at the time that the gift was from the Roofers Union. This report was subsequent to the public disclosure of the federal investigation into these matters. In an attachment to his financial disclosure statement, Respondent White stated that he did not ask for or solicit the gift in question, that he did not expect or anticipate the gift and, when he realized the contents of the envelope on his desk, he gave it to his personal court officer with instructions to buy gift certificates for his staff and court personnel. This attachment also states that the money was placed on his desk in a plain, white envelope.

Based on the information available to it, the Board sent a Letter of Inquiry dated November 28, 1986, to the Respondent concerning these matters. In a response

received from his counsel, the Respondent denied the receipt of any funds in 1984, acknowledged the receipt of such funds in 1985, and repeated the explanation set forth in the attachment to his financial disclosure statement for the year 1985.

Based on the information available to it and after consideration of the response to the Letter of Inquiry sent by the Respondent's attorney, the Board instituted formal proceedings in this matter on December 12, 1986. A copy of the Letter of Inquiry and the response thereto and the formal charges and the Judge's financial disclosure statements are all attached to this petition.

The formal charges issued to Respondent charge a violation of Canons 1, 2 and 5C(l) of the Code of Judicial Conduct. Canon 1 provides that a Judge should participate in establishing, maintaining, and enforcing, and should himself or herself observe, high standards of conduct so that the integrity and the independence of the Judiciary may be preserved. The Canon further provides that the provisions of the Code should be construed and applied to further that objective. Canon 2 states and requires that a Judge should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the Judiciary and states that a Judge should not convey or knowingly permit others to convey the impression that they are in a special position to influence him or her. Canon 5C(l) provides that a Judge should refrain from financial dealings that tend to reflect adversely on his or her impartiality, interfere with the proper performance of his or her judicial duties, exploit his or her judicial position, or involve him or her in transactions with persons likely to come before the Court on which he or she serves. We submit that considering the circumstances under which the payments were made such charges would be appropriate whatever

the identity or character of the donor, and that such charges are absolutely mandated when the cash payments are received from an organization of the size and character of Roofers Union, Local 30-30B.

It is further submitted that it is not merely sufficient for the members of our Judiciary to do justice, the public and society must have good cause and reason to believe that justice is, in fact, being done. The Code of Judicial Conduct is based on that very premise and recognizes that any action taken by a Judge which destroys the public confidence in the integrity and impartiality of the Judiciary tends to cause disrespect for the law itself. In the words of Canon 1, "an independent an honorable judiciary is indispensable to justice in our society." And, as just stated and as recognized by this Honorable Court in promulgating Rule 24, it is equally indispensable to our society that our citizens have confidence that their Judges are independent and honorable.

We submit that the information available in the public record and the information available to the Board as described above, requires the granting of this petition so that the immediate and substantial public harm and the continuing erosion of public confidence in the orderly administration of justice which, in the judgment of the Board, is being caused by the continued judicial service of the Respondent may be terminated.

Respectfully submitted,

/s/ Robert L. Keuch
Robert L. Keuch
General Counsel
Judicial Inquiry and Review Board

Dec. 19, 1986
Date

SUPREME COURT OF PENNSYLVANIA
STATEMENT OF FINANCIAL INTEREST

"All Statements of Financial Interest filed shall be made available for public Inspection and copying during regular office hours." (Section 4 of Order).

INSTRUCTIONS: Complete entire form. Please type or print. Attach additional 8½" x 11" sheets if necessary and indicate each item by number.

1 Last Name	First Name	Middle Initial	2 County Name
White	Thomas	A.	Philadelphia

3 Street Address
10800 Ellicott Road

4 City	State	Zip Code	Telephone
Philadelphia	PA	19154	(215) 632-6323

5				
	Supreme	[ ]	Common Pleas	[x]
	Superior	[ ]	Phila. Municipal Ct.	[ ]
	Commonwealth	[ ]	Phila. Traffic Ct.	[ ]
	Senior Judge	[ ]	District Justice	[ ]
			Senior District Justice	[ ]
			Pittsburgh Magistrates Court	[ ]

Judicial Dist. No. 1 District No. _____

6 List your Spouse's Name
Edna F. White

7 List your Dependant Children (Names)
Eileen and Leo

REMEMBER Items 8 through 14 All information concerns the PRIOR CALENDAR YEAR. NO DOLLAR AMOUNTS are required except in item 11, if answer is NONE enter NONE in the correct block. Information must be included for spouse and dependant children.

8 REAL ESTATE INTERESTS: List any direct or indirect interest in any real estate described in supplemental instructions.
(See page 2) IF NONE, ENTER NONE.
None

9 CREDITORS: List those owed over $5000 and the interest rate on each Loan/Debt. DO NOT LIST loans or credit between you, your spouse and your dependent children. DO NOT LIST the mortgage on your personal residences. IF NONE, ENTER NONE.

Creditor	Address	Interest Rate
None		

10 DIRECT OR INDIRECT SOURCES OF INCOME: List Employer(s) and other sources of $500 or more. IF NONE, ENTER NONE.

Name	Address
Camden Refrigerating & Terminals Corp	Kaighn Ave. & Delaware River Camden, NJ 08103
Commonwealth of Pennsylvania	
Broadway Equipment Leasing Corp.	701 N. Broadway, Gloucester City New Jersey 08030

11 Source of gift: List gifts of cash or property with a value of $200 or more. IF NONE, ENTER NONE.

Source of Gift	Address of Source of Gift
TOM BROWN	I assumed at the time that it was from the Roofer's Union.

Value of gift	Reason for gift
$300.00	Christmas gift (See attachment)

12 HONORARIA: List sources over $100. IF NONE, ENTER NONE.
None

13 OFFICE OR DIRECTORSHIP IN ANY BUSINESS: As identified in the Bylaws or Charter of the Business. IF NONE, ENTER NONE.
None.

Business Entity	Position held

14 FINANCIAL INTEREST IN ANY LEGAL ENTITY IN BUSINESS FOR PROFIT:
(See supplemental instructions page 2).
IF NONE, ENTER NONE.
See Schedule Attached

This form must be SIGNED and DATED and contain your NAME in order to be accepted.

Information represents disclosure for the prior calendar year 1985.

Signature /s/ Thomas A. White Date May 1, 1986

ATTACHMENT

In December of 1985, shortly before Christmas, Tom Brown, a former court officer in the Philadelphia Court of Common Pleas and an individual whom I have known for over thirty years, appeared in my judicial chambers without an appointment and with no advance notice. I recall speaking to Mr. Brown very briefly about a mutual acquaintance, and while doing so, he placed a plain, white envelope on my desk. I did not open the envelope, nor did I know its contents. Mr. Brown remained in my office for only several minutes because I was extremely busy at the time and my secretary advised that another Judge of the Court had come to see me.

At some point after Mr. Brown left the office, I examined the envelope and realized for the first time that it contained money. I took the money, $300.00 in cash, out of the envelope and gave it to my personal court officer with instructions to buy eight gift cetificates from Wanamaker's Department Store. All of the eight gift certificates, which were in the amount of $25.00 and $50.00, were given to my staff and court personnel.

I did not ask for any money, did not expect to receive any money, and had no advance notice or knowledge that Mr. Brown was going to appear in my office on the day in question.

T. and L. Leasing Corp. 701 N. Broadway Gloucester City, NJ 08030	Thomas A. White
Broadway Equipment Leasing Corp. 701 N. Broadway Gloucester City, NJ 08030	Thomas A. White
Camden Refrigerating & Terminals Corp. Kaign Avenue & Delaware River Camden, NJ 08103	Thomas A. White
PAWCO, Inc. Inactive Corporation	Thomas A. White
KEJEL Corp. Inactive Corporation	Thomas A. White
Camden Meat Inspection of New Jersey Foot of Clinton Street P.O. Box 507 Camden, NJ 08101-0507	Thomas A. White
Dockside Regrigerated Warehouses, Inc. Foot of Clinton Street P.O. Box 507 Camden, NJ 08101-0507	Thomas A. White
The Riverfront Development Corp. 701 N. Broadway Gloucester City, NJ 08030	Thomas A. White
Holt Hauling and Warehousing Sytem, Inc. 701 N. Broadway Gloucester City, NJ 08030	Edna F. White

SUPREME COURT OF PENNSYLVANIA
STATEMENT OF FINANCIAL INTEREST

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White	Thomas	A.	Philadelphia

3 Street Address
10800 Ellicott Road

4 City	State	Zip Code	Telephone
Philadelphia	PA	19154	(215) 632-6323

5			
Supreme	[ ]	Common Pleas	[x]
Superior	[ ]	Phila. Municipal Ct.	[ ]
Commonwealth	[ ]	Phila. Traffic Ct.	[ ]
Senior Judge	[ ]	District Justice	[ ]
		Senior District Justice	[ ]
		Pittsburgh Magistrates Court	[ ]

Judicial Dist. No. 1 District No. _____

6 List your Spouse's Name	7 List your Dependant Children (Names)
Edna F. White	Eileen, James and Leo

REMEMBER Items 8 through 14 All information concerns the PRIOR CALENDAR YEAR. NO DOLLAR AMOUNTS are required except in item 11, if answer is NONE enter NONE in the correct block. Information must be included for spouse and dependant children.

8 REAL ESTATE INTERESTS: List any direct or indirect interest in any real estate described in supplemental instructions.
(See page 2) IF NONE, ENTER NONE.
None

9 CREDITORS: List those owed over $5000 and the interest rate on each Loan/Debt. DO NOT LIST loans or credit between you, your spouse and your dependent children. DO NOT LIST the mortgage on your personal residences. IF NONE, ENTER NONE.

Creditor	Address	Interest Rate
None		

10 DIRECT OR INDIRECT SOURCES OF INCOME: List Employer(s) and other sources of $500 or more. IF NONE, ENTER NONE.

Name	Address
Camden Refrigerating & Terminals Corp	Kaighn Ave. & Delaware River Camden, NJ 08103
Commonwealth of Pennsylvania	
Broadway Equipment Leasing Corp.	701 N. Broadway, Gloucester City New Jersey 08030

11 Source of gift: List gifts of cash or property with a value of $200 or more. IF NONE, ENTER NONE.

Source of Gift	Address of Source of Gift
None	

Value of gift	Reason for gift

12 HONORARIA: List sources over $100. IF NONE, ENTER NONE.
None

13 OFFICE OR DIRECTORSHIP IN ANY BUSINESS: As identified in the Bylaws or Charter of the Business. IF NONE, ENTER NONE.
None.

Business Entity	Position held
None.	

14 FINANCIAL INTEREST IN ANY LEGAL ENTITY IN BUSINESS FOR PROFIT:
(See supplemental instructions page 2).
IF NONE, ENTER NONE.
See Schedule Attached

This form must be SIGNED and DATED and contain your NAME in order to be accepted.

Information represents disclosure for the prior calendar year 19___.

Signature /s/ Thomas A. White Date 4/18/85

T. and L. Leasing Corp. 701 N. Broadway Gloucester City, NJ 08030	Thomas A. White
Broadway Equipment Leasing Corp. 701 N. Broadway Gloucester City, NJ 08030	Thomas A. White
Camden Regrigerating & Terminals Corp. Kaighn Ave. & Delaware River Camden, NJ 08103	Thomas A. White
PAWCO, Inc. Inactive Corporation	Thomas A. White
KEJEL Corp. Inactive Corporation	Thomas A. White
Holt Hauling and Warehousing System, Inc. 701 N. Broadway Gloucester City, NJ 08030	Edna F. White

SEAL

COMMONWEALTH OF PENNSYLVANIA
JUDICIAL INQUIRY AND REVIEW BOARD

Honorable James E. Rowley,
Chairman
Honorable Stephen J. McEwen, Jr.
Honorable Alex Bonavitacola
Honorable James M. Munley
Honorable Eunice L. Ross
Honorable Bruce W. Kauffman
James H. Higgins
Lawrence T. Hoyle, Jr., Esq.
Antonia L. Scarlata

Robert L. Keuch, Esq.
Executive Director
and
General Counsel
225 Market Street
Harrisburg, PA 17101
(717) 234-7911

November 28, 1986

Honorable Thomas A. White
Judge
811 One E. Penn Square Building
Philadelphia, PA 19107

Re: Board Docket No. 86-A-109

Dear Judge White:

The Judicial Inquiry and Review Board is charged with the responsibility of investigating allegations that members of the judiciary have violated Article 5(b), Section 17(b) of the Constitution of the Commonwealth of Pennsylvania which directs that justices and judges shall not engage in any activity prohibited by law and shall not violate any canon of legal or judicial ethics prescribed by the Supreme Court. Rule 1(b) of the Board's Rules of Procedure provides that if, after preliminary investigation, it is felt that an allegation warrants further invesigation, the member of the judiciary involved shall be given notice of the investigation and shall be afforded an opportunity to answer and present such matters as the member may choose.

This is to notify you, pursuant to Rule 1(b), that the Board has received allegations concerning your judicial conduct which have been determined to warrant further investigation. Also, pursuant to that Rule, you may provide an answer or other information relevant to these allegations. Any response is requested within ten (10) days of the date of this letter and should be filed with the Judicial Inquiry and Review Board, 225 Market Street, Harrisburg, PA 17101.

The inquiry into these allegations has been initiated by the Board itself. The allegations are that in 1984 and 1985 you accepted cash gifts from a representative of the Roofers' Union Local 30-30B, and that on your financial disclosure statement for the year 1984 you failed to list the cash gift. The alleged conduct would appear to involve possible violations of Canons 1, 2 and 5C(1) of the Code of Judicial Conduct.

Please be advised that neither the receipt of an allegation or a determination by the Board that further investigation is needed constitutes a judgment that misconduct has occurred. If the Board's investigation results in a finding that further action is not necessary, you will be notified pursuant to Rule 1(d).

Very truly yours,

/s/ Robert L. Keuch
Robert L. Keuch
General Counsel

RLK:mms

RECEIVED DEC. 12, 1985

CURRAN, WINNING & FIORAVANTI, P.C.
Attorneys at Law
606 East Baltimore Pike
P.O. Box 30
Media, Pennsylvania 19063

(215) 565-4322

ROBERT E. J. CURRAN
WILLIAM J. WINNING
JOSEPH H. FIORAVANTI
JAMES J. BYRNE, JR.
JOHN L. CARR

PHILADELPHIA OFFICE
CONTINENTAL BUILDING
SUITE 1200
400 MARKET STREET
PHILADELPHIA, PENNSYLVANIA, 19106

(215) 627-2650

December 10, 1986

Robert L. Keuch, Esquire
Executive Director and
General Counsel
Commonwealth of Pennsylvania
Judicial Inquiry and Review Board
225 Market Street
Harrisburg, Pennsylvania 17101

Re: Board Docket No. 86-A-109

Dear Mr. Keuch:

This letter will serve as a response to your letter of November 28, 1986 to the Honorable Thomas A. White, Judge, Court of Common Pleas of Philadelphia. This office represents Judge White in connection with the preliminary investigation now being conducted by the Judicial Inquiry and Review Board relative to allegations concerning Judge White's judicial conduct as referred to in your letter of November 28, and is authorized to submit this response on his behalf.

Initially, Judge White denies that he has in any way violated the Canons of Judicial Conduct, and specifically, Canons 1, 2 and 5(C)(1). He has always observed the highest standards of conduct so as to further the integrity and independence of the judiciary which he has served since 1977, and has consistently exhibited the highest respect for and compliance with the law, both as a practicing attorney in the City of Philadelphia and as a Judge of the Court of Common Pleas in Philadelphia. At no time has Judge White engaged in any financial or business dealings that reflected adversely on his impartiality, interfered with the proper performance of his duties, or exploited his judicial position.

With respect to the allegations that Judge White accepted cash gifts from a representative of Roofers Union, Local 30-30B, in 1984 and 1985, and failed to disclose the alleged 1984 cash gift on the financial disclosure statement filed for that year, please be advised that Judge White *did not* accept or receive any cash gift from the Roofers Union in 1984, and, consequently, his financial disclosure statement for that year, which did not show the receipt of a cash gift from the Roofers Union, was accurate and complete in every respect. Simply stated, the allegation that Judge White received a cash gift in 1984 from the Roofers Union is false.

With regard to 1985, Judge White did receive a totally unsolicited Christmas gift of $300, which he in fact disclosed on his financial disclosure statement for that year and fully explained in his testimony before the federal grand jury. The circumstances of the 1985 Christmas gift are more fully described in the disclosure statement, the relevant portions of which are attached hereto and incorporated herein by reference for your convenience. As clearly stated in the attached disclosure statement, Judge

White did not ask for or solicit the gift in question, he did not expect or anticipate any gift, and, as soon as he realized the contents of the envelope left on his desk, he immediately gave the money to his personal court officer with instructions to buy gift certificates for members of the Judge's staff and court personnel, retaining none of the money for himself.

Rule 1(B) of the Rules of Procedure Governing the Judicial Inquiry and Review Board provides that the judge under preliminary investigation "shall be afforded reasonable opportunity to answer and to present such matters as he may choose." While this letter is in response to yours of November 28, we would respectfully request at the appropriate time, and certainly before any conclusion is reached by the Board as to whether formal proceedings should be instituted in accordance with Rule 2, a reasonable opportunity to be heard and to present testimony and information in defense of the allegations against Judge White. In this regard, I request that we be provided with the precise facts and details underlying the allegations against Judge White, including statements of any witnesses, so that an appropriate and responsive defense can be prepared.

Thank you for your consideration in this regard.

Very truly yours,

/s/ William J. Winning
William J. Winning

WJW:cj
Enclosure

cc: Honorable Thomas A. White

SUPREME COURT OF PENNSYLVANIA
STATEMENT OF FINANCIAL INTEREST

"All Statements of Financial Interest filed shall be made available for public Inspection and copying during regular office hours." (Section 4 of Order).

INSTRUCTIONS: Complete entire form. Please type or print. Attach additional 8½" x 11" sheets if necessary and indicate each item by number.

1 Last Name	First Name	Middle Initial	2 County Name
White	Thomas	A.	Philadelphia

3 Street Address
10800 Ellicott Road

4 City	State	Zip Code	Telephone
Philadelphia	PA	19154	(215) 632-6323

5				
Supreme	[ ]	Common Pleas	[x]
Superior	[ ]	Phila. Municipal Ct.	[ ]
Commonwealth	[ ]	Phila. Traffic Ct.	[ ]
Senior Judge	[ ]	District Justice	[ ]
		Senior District Justice	[ ]
		Pittsburgh Magistrates Court	[ ]

Judicial Dist. No. _____ District No. _____

6 List your Spouse's Name	7 List your Dependant Children (Names)
Edna F. White	Eileen and Leo

REMEMBER: Items 8 through 14 All information concerns the PRIOR CALENDAR YEAR. NO DOLLAR AMOUNTS are required except in item 11, if answer is NONE enter NONE in the correct block. Information must be included for spouse and dependant children.

8 REAL ESTATE INTERESTS: List any direct or indirect interest in any real estate described in supplemental instructions.
(See page 2) IF NONE, ENTER NONE.
None

9 CREDITORS: List those owed over $5000 and the interest rate on each Loan/Debt. DO NOT LIST loans or credit between you, your spouse and your dependent children. DO NOT LIST the mortgage on your personal residences. IF NONE, ENTER NONE.

Creditor	Address	Interest Rate
None		

10 DIRECT OR INDIRECT SOURCES OF INCOME: List Employer(s) and other sources of $500 or more. IF NONE, ENTER NONE.

Name	Address
Camden Refrigerating & Terminals Corp	Kaighn Ave. & Delaware River Camden, NJ 08103
Commonwealth of Pennsylvania	
Broadway Equipment Leasing Corp.	701 N. Broadway, Gloucester City New Jersey 08030

11 Source of gift: List gifts of cash or property with a value of $200 or more. IF NONE, ENTER NONE.

Source of Gift	Address of Source of Gift
TOM BROWN	I assumed at the time that it was from the Roofer's Union.

Value of gift	Reason for gift
$300.00	Christmas gift (See attachment)

12 HONORARIA: List sources over $100. IF NONE, ENTER NONE.
None

13 OFFICE OR DIRECTORSHIP IN ANY BUSINESS: As identified in the Bylaws or Charter of the Business. IF NONE, ENTER NONE.
None.

Business Entity	Position held

14 FINANCIAL INTEREST IN ANY LEGAL ENTITY IN BUSINESS FOR PROFIT:
(See supplemental instructions page 2).
IF NONE, ENTER NONE.
See Schedule Attached

This form must be SIGNED and DATED and contain your NAME in order to be accepted.

Information represents disclosure for the prior calendar year 19___.

Signature Date

ATTACHMENT

In December of 1985, shortly before Christmas, Tom Brown, a former court officer in the Philadelphia Court of Common Pleas and an individual whom I have known for over thirty years, appeared in my judicial chambers without an appointment and with no advance notice. I recall speaking to Mr. Brown briefly about a mutual acquaintance, and while doing so, he placed a plain, white envelope on my desk. I did not open the envelope, nor did I know its contents. Mr. Brown remained in my office for only several minutes because I was extremely busy at the time and my secretary advised that another Judge of the Court had come to see me.

At some point after Mr. Brown left the office, I examined the envelope and realized for the first time that it contained money. I took the money, $300.00 in cash, out of the envelope and gave it to my personal court officer with instructions to buy eight gift certificates from Wanamaker's Department Store. All of the eight gift certificates, which were in the amount of $25.00 and $50.00, were given to my staff and court personnel.

I did not ask for any money, did not expect to receive any money, and had no advance notice or knowledge that Mr. Brown was going to appear in my office on the day in question.

IN THE SUPREME COURT OF PENNSYLVANIA
(JIRB Docket No. ___)

IN THE MATTER OF:	:	JUDICIAL INQUIRY AND REVIEW BOARD
JUDGE THOMAS A. WHITE	:	
	:	HEARING DOCKET NO. 119
	:	(Complaint Docket No. 86A-109)

CERTIFICATE OF SERVICE

I, Robert L. Keuch, General Counsel of the Judicial Inquiry and Review Board, hereby certify that on December 19, 1986, I caused to be served a true and correct copy of the foregoing Petition for Interim Relief and Memorandum of Support upon Respondent by having it personally served upon him in accordance with Rule 24(b) of the Board's Rules of Procedure.

/s/ Robert L. Keuch
Robert L. Keuch
General Counsel

Dated Dec. 19, 1986.